

(2) Seeking third party opinions such as supervisory comments as to job knowledge, duty performance, or other opinion-type evaluations;

(3) When obtaining the needed information directly from the individual is exceptionally difficult or may result in unreasonable costs; or

(4) Contacting a third party at the request of the individual to furnish certain information such as exact periods of employment, termination dates, copies of records, or similar information.

(c) *Collecting social security numbers (SSNs).* (1) It is unlawful for DeCA to deny an individual any right, benefit, or privilege provided by law because an individual refuses to provide his or her SSN. Executive Order 9397 authorizes solicitation and use of SSNs as numerical identifiers for individuals in most Federal record systems, however, it does not provide mandatory authority for soliciting.

(2) When an individual is requested to provide their SSN, they must be told:

(i) the uses that will be made of the SSN;

(ii) The statute, regulation or rule authorizing the solicitation of the SSN; and

(iii) Whether providing the SSN is voluntary or mandatory.

(3) Once the SSN has been furnished for the purpose of establishing a record, the notification in paragraph (c)(2) of this section is not required if the individual is only requested to furnish or verify the SSNs for identification purposes in connection with the normal use of his or her records.

(d) *Privacy act statements.* When a DeCA individual is requested to furnish personal information about himself or herself for inclusion in a system of records, a Privacy Act Statement is required regardless of the medium used to collect the information, *e.g.* forms, personal interviews, telephonic interviews. The statement allows the individual to make a decision whether to provide the information requested. The statement will be concise, current, and easily understood and must state whether providing the information is voluntary or mandatory. If furnishing the data is mandatory, a Federal statute, Executive Order, regulation or

other lawful order must be cited. If the personal information solicited is not to be incorporated into a DeCA system of records, a PA statement is not required. This information obtained without the PA statement will not be incorporated into any DeCA systems of records.

(1) *The DeCA Privacy Act Statement will include:*

(i) The specific Federal statute or Executive Order that authorized collection of the requested information;

(ii) The principal purpose or purposes for which the information is to be used;

(iii) The routine uses that will be made of the information;

(iv) Whether providing the information is voluntary or mandatory; and

(v) The effects on the individual if he or she chooses not to provide the requested information.

(2) *Forms.* When DeCA uses forms to collect personal information, placement of the Privacy Act advisory statement should be in the following order of preference:

(i) Below the title of the form and positioned so the individual will be advised of the requested information,

(ii) Within the body of the form with a notation of its location below the title of the form,

(iii) On the reverse of the form with a notation of its location below the title of the form,

(iv) Attached to the form as a tear-off sheet, or

(v) Issued as a separate supplement to the form.

(3) *Forms issued by non-DoD Activities.* Ensure that the statement prepared by the originating agency on their forms is adequate for the purpose for which DeCA will use the form. If the statement is inadequate, DeCA will prepare a new statement before using the form. Forms issued by other agencies not subject to the Privacy Act but its use requires DeCA to collect personal data, a Privacy Act Statement will be added.

§ 327.7 Access by individuals

(a) *Individual access to personal information.* Release of personal information to individuals whose records are maintained in a systems of records under this part is not considered public release of information. DeCA will release

to the individuals all of the personal information, except to the extent the information is contained in an exempt system of records.

(1) *Requests for access.* (i) Individuals in DeCA Headquarters and FOAs will address requests for access to their personal information to the DeCA Privacy Act Officers. Individuals in Regions, CDCs, and commissaries, will address requests to their respective Region Privacy Act Coordinator. The individual is not required to explain or justify why access is being sought.

(ii) If an individual wishes to be accompanied by a third party when seeking access to his or her records or to have the records released directly to the third party, a signed access authorization granting the third party access is required.

(iii) A DeCA individual will not be denied access to his or her records because he or she refuses to provide his or her SSN unless the SSN is the only way retrieval can be made.

(2) *Granting access.* (i) If the record is not part of an exempt system, DeCA personnel will be granted access to the original record or an exact copy of the original record without any changes or deletions. Medical records will be disclosed to the individual to whom they pertain unless an individual fails to comply with the established requirements. This includes refusing to name a physician to receive medical records when required, refusing to pay fees, or when a judgment is made that access to such records may have an adverse effect on the mental or physical health of the individual. Where an adverse effect may result, a release will be made in consultation with a physician.

(ii) DeCA personnel may be denied access to information compiled in reasonable anticipation of a civil action or proceeding. The term "civil proceeding" is intended to include quasi-judicial and pretrial judicial proceedings. Information prepared in conjunction with the quasi-judicial, pretrial and trial proceedings to include those prepared by DeCA legal and non-legal officials of the possible consequences of a given course of action are protected from access.

(iii) Requests by DeCA personnel for access to investigatory records per-

taining to themselves, compiled for law enforcement purposes, are processed under this part and that of 32 CFR part 310. Those requests by DeCA personnel for investigatory records pertaining to themselves that are in records systems exempt from access provisions shall be processed under this part or 32 CFR part 285, depending upon which provides the greatest degree of access.

(3) *Non agency records.* (i) Uncirculated personal notes and records that are not given or circulated to any person or organization (example, personal telephone list) that are kept or discarded at the author's discretion and over which DeCA exercises no direct control, are not considered DeCA records. However, if personnel are officially directed or encouraged, either in writing or orally, to maintain such records, they may become "agency records" and may be subject to this part.

(ii) Personal uncirculate handwritten notes of team leaders, office supervisors, or military supervisory personnel concerning subordinates are not a system of records within the meaning of this part. Such notes are an extension of the individual's memory. These notes, however, must be maintained and discarded at the discretion of the individual supervisor and not circulated to others. Any established requirement to maintain such notes (written or oral directives, regulation or command policy) make these notes "AGENCY RECORDS." If the notes are circulated, they must be made a part of the system of records. Any action that gives personal notes the appearance of official agency records is prohibited unless they have been incorporated into a DeCA system of records.

(b) *Relationship between the Privacy Act and the Freedom of Information Act (FOIA).* (1) Requests from DeCA individuals for access to a record pertaining to themselves made under the FOIA are processed under the provisions of this part, 32 CFR part 310 and DeCA Directive 30-12, Freedom of Information Act (FOIA) Program.⁵

⁵See footnote 3 to § 327.5.

(2) Request from DeCA individuals or access to a record pertaining to themselves are processed under this part and 32 CFR part 310.

(3) Requests from DeCA individuals for access to records about themselves that cite both Acts or the DeCA implementing directives for both Acts are processed under this part except:

(i) When the access provisions of the FOIA provide a greater degree of access process under the FOIA, or

(ii) When access to the information sought is controlled by another Federal statute process access procedures under the controlling statute.

(4) Requests from DeCA individuals for access to information about themselves in a system of records that do not cite either Act or DeCA implementing directive are processed under the procedures established by this part.

(5) DeCA requesters will not be denied access to personal information concerning themselves that would be releasable to them under either Act because they fail to cite either Act or the wrong Act. The Act or procedures used in granting or denying access will be explained to requesters.,

(6) DeCA requesters should receive access to their records within 30 days.

(7) Records in all DeCA systems maintained in accordance with the Government-wide systems notices are in temporary custody of DeCA, and all requests or amend these records will be processed in accordance with this part.

(c) *Denial of individual access.* (1) A DeCA individual may be denied formal access to a record pertaining to him/her only if the record:

(i) Was compiled in reasonable anticipation of civil action.

(ii) Is in a system of records that has been exempt from access provisions of this part.

(iii) All systems of records maintained by the Defense Commissary Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all sys-

tems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(iv) Is contained in a system of records for which access may be denied under some other Federal statute.

(v) All systems of records maintained by the DeCA shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(2) DeCA individuals will only be denied access to those portions of the records from which the denial of access serves some legitimate governmental purpose.

(3) Other reasons to refuse DeCA individuals are:

(i) The request is not described well enough to locate it within a reasonable amount of effort by the PA Officer or PA Coordinator; or

(ii) An individual fails to comply with the established requirements including refusing to name a physician to receive medical records when required or to pay fees.

(4) Only the DeCA IDA can deny access. This denial must be in writing and contain:

(i) The date of the denial, name, title of position, and signature of the DeCA Initial Denial Authority.

(ii) The specific reasons for the denial, including specific reference to the appropriate sections of the PA, other statutes, this part or the Code of Federal Regulations (CFR);

(iii) Information providing the right to appeal the denial through the DeCA appeal procedure within 60 days, and the title, position and address of the DeCA PA Appellate Authority.

(5) *DeCA Appeal Procedures.* The Director of DeCA, or the designee, will review any appeal by an individual from

a denial of access to DeCA records. Formal written notification will be provided to the individual explaining whether the denial is sustained totally or in part. The DeCA PA Officer will:

(i) Assign a control number and process the appeal to the Director, DeCA or the designee appointed by the Director.

(ii) Provide formal written notification to the individual by the appeal authority explaining whether the denial is sustained totally or in part and the exact reasons for the denial to include provisions of the Act, other statute, this part or the CFR whichever the determination is based, or

(iii) Provide the individual access to the material if the appeal is granted.

(iv) Process all appeals within 30 days of receipt unless the appeal authority determines the review cannot be made within that period and provide notification to the individual the reasons for the delay and when an answer may be expected.

(d) *Amendment of records.* (1) DeCA employees are encouraged to review the personal information being maintained about them periodically. An individual may request amendment of any record contained in a system of records unless the system of records has been exempt specifically from the amendment procedures by the Director, DeCA. A request for amendment must include:

(i) A description of the item or items to be amended.

(ii) The specific reason for the amendment.

(iii) The type of amendment action such as deletion, correction or addition.

(iv) Copies of evidence supporting the request.

(v) DeCA employees may be required to provide identification to make sure that they are indeed seeking to amend a record pertaining to themselves.

(2) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to these records are made through specific procedures established for the amendment of these records.

(i) Written notification will be provided to the requester within 10 working days of its receipt by the DeCA PA Officer. No notification will be pro-

vided to the requester if the action completed within the 10 days. Only under exceptional circumstances will more than 30 days be required to reach the decision to amend a request. If the decision is to grant all or in part of the request for amendment, the record will be amended and the requester informed and all other offices/personnel known to be keeping the information.

(ii) If the request for amendment is denied in whole or in part, The PA Officer will notify the individual in writing and provide the specific reasons and the procedures for appealing the decision.

(iii) All appeals are to be processed within 30 days. If additional time is required, the requester will be informed and provided when a final decision may be expected.

(e) *Fee assessments.* (1) DeCA personnel will only be charged the direct cost of copying and reproduction, computed using the appropriate portions of the fee schedule in DeCA Directive 30-12.⁶ Normally, fees are waived automatically if the direct costs of a given request are less than \$30. This fee waiver provision does not apply when a waiver has been granted to the individual before, and later requests appear to be an extension or duplication of that original request. Decisions to waive or reduce fees that exceed the automatic waiver threshold will be made on a case-by-case basis. Fees may not be charged when:

(i) Copying is performed for the convenience of the Government or is the only means to make the record available for the individual.

(ii) No reading room is available for the individual to review the record or a copy is made to keep the original in DeCA files.

(iii) The information may be obtained without charge under any other regulation, directive, or statute.

(2) No fees will be collected for search, retrieval, and review of records to determine releasability, copying of records when the individual has not requested a copy, transportation of records and personnel, or normal postage.

⁶See footnote 3 to § 327.5.